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U.S. Department of Homeland

Bureau of Citizenship and Immigration Services

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass. Ave., 3rd Floor
Washington, D.C. 20536

[redacted]

File: LIN 01 258 53155 Office: NEBRASKA SERVICE CENTER Date: MAY 14 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a computer software and services company. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, as its technical representative. The director determined that the petitioner had not established that the beneficiary has specialized knowledge or that he has been and would be employed in a capacity involving specialized knowledge.

On appeal, the petitioner submits a letter asserting that the beneficiary possesses specialized knowledge.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Under 8 C.F.R. § 214.2(l)(3), an individual petition filed on Form I-129 shall be accompanied by:

> (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
>
> (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

Pursuant to 8 C.F.R. § 214.2(l)(3)(vi), if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

> A) Sufficient physical premises to house the new office have been secured;

B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

C) The petitioner has the ability to remunerate the beneficiary and to commence doing business in the United States.

The United States petitioner was incorporated in the year 2000 and states that it is a wholly-owned subsidiary of [redacted] located in Ostfildern, Germany. The petitioner declares five employees and approximately $1.5 million in gross revenues. The petitioner seeks to employ the beneficiary in the United States for three years at an annual salary of $80,000.

At issue in this proceeding is whether the petitioner has established that the beneficiary has specialized knowledge and whether he has been and will be employed in a capacity that involves specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

> An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(D) state:

> *Specialized Knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

In support of the petition, the petitioner provided the Bureau, in part, with the following statement:

> [redacted] success depends, to a great extent, on our ability to rapidly train our employees and service our customers. This will require a transfer of knowledge from the German parent company to the U.S. subsidiary during this formative start-up period.
>
> Please consider [redacted] Visa request for [redacted] His work experience as a network

administrator and his four years of [redacted] product experience will enable [redacted] to build a competent technical organization here in the United States.

On September 10, 2001, the director requested that the petitioner submit additional evidence. The petitioner was notified that it had not submitted sufficient evidence establishing that the position abroad required a person with specialized knowledge or that the beneficiary possesses specialized knowledge. The director noted that "advanced knowledge" is distinguished from "specialized knowledge" and that the latter can be demonstrated by distinguishing the beneficiary's knowledge from knowledge possessed by others within the organization and the industry at large.

In response to the above request, the petitioner provided the following description of the beneficiary's job:

> [redacted] has developed procedures, educational facilities, and educational materials to train customers in the implementation and use of the company's [redacted] family of products. The Beneficiary, having been one of the initial users (Customer) of technology when it was introduced to the market and later as an employee of [redacted] was instrumental in the creation of the policies and procedures for implementing [redacted] technology into customer enterprise environments, and in the creation of educational procedures and materials for customer training. In addition, [redacted] a senior consultant and manager, created the [redacted] product certification test requirements for customers and employees. The certification process is designed to insure that the certificate holder has advanced [redacted] technology knowledge for the management of computer desktops and enterprise deployment of applications. No person in the United States has been awarded the [redacted] Product Certification. in [sic] addition to [redacted] there are only a few people in Germany that are certified at this time.
>
> [redacted] job responsibilities will further include the implementation of the same customer and employee education programs, and certification programs here in the United States that he helped implement in Germany.... (Emphasis added in the original.)
>
> In addition to creating and establishing training education systems, policies and procedures in the United States, [redacted] will be responsible for the creation and management of [redacted] technical pre[-] and post[-] sales product support areas. As technical manager for [redacted]

[redacted] currently assists in the testing and quality control of the [redacted] product line. [redacted] expertise in this area is further required in the U.S. to create of [sic] a product-testing lab for all English based products marketed by [redacted] and [redacted] subsidiaries and for customer support problem determination.

The director denied the petition, concluding that certifications, such as those obtained by the beneficiary, are common in the software industry, and that such certifications do not help establish that the beneficiary possesses specialized knowledge.

On appeal, the petitioner asserts that as a result of "being an initial beta user of the petitioner's German parent company's [redacted] technology, [redacted] gained an in-depth knowledge on the inner workings of the product that was not made available to other customers." The petitioner points out that the beneficiary has been valuable to the parent company and would be just as valuable to the U.S. entity because he has worked closely with the [redacted] product developers, and has, therefore, acquired "knowledge of the Company's product(s) form [sic] both a customer's perspective and as a technical product manager." In essence, the core of the petitioner's appeal is that the beneficiary, through experience gained initially as a customer and, subsequently, as a long-time user of the petitioner's product, has acquired knowledge which the petitioner now needs him to pass on to other companies who wish to purchase and learn to implement the same software products. While the petitioner contends that the beneficiary's knowledge is sufficient to qualify as "specialized knowledge," the plain meaning of the term "specialized knowledge" is knowledge or expertise *beyond the ordinary* in a particular field, process, or function. (Emphasis added.) The beneficiary's knowledge is not outside the ordinary.

It is clear, based on the petitioner's statements on appeal, that the beneficiary's knowledge has come mainly from continued use of the [redacted] software over an extended period of time. Such knowledge can be readily acquired by others in the field, given the opportunity to use the product, as did the beneficiary, in the appropriate technology environment. The petitioner refers, in general, to other companies who have transferred their "skilled employees" to the United States. However, such employees have most likely been transferred to the United States under other visa categories appropriate for skilled workers. There is no indication, nor has the petitioner provided the Bureau with proof, that "skilled employees" are successful in obtaining an L-1B visa classification unless their petitioners are able to provide sufficient evidence of their specialized knowledge.

The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve knowledge or expertise beyond what is commonly held in his field. While it is clear that the beneficiary is a highly skilled individual and is experienced with certain software which accomodates the petitioner's needs, skill and experience are not enough. Contrary to the petitioner's argument, mere familiarity with an organization's product or service, such as knowledge of its security codes and procedures, does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been and will be employed primarily in a specialized knowledge capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to provide the Bureau with any evidence of a qualifying relationship between it and a foreign entity, as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G). Further, the petitioner has provided no evidence that it secured a sufficient business premises as of the date the petition was filed, as required by 8 C.F.R. § 214.2(l)(3)(vi)(A). However, as the appeal is being dismissed on other grounds, these issues need not be further addressed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.